Natural Resources Defense Council

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Submitted by email to: DOCKET@energy.state.ca.us

Docket Unit
California Energy Commission
Docket No. 01-GGE-1
1516 Ninth Street, MS 4
Sacramento, California 95814-5512

Dear Sir or Madam:

Thank you for the opportunity to comment on the Draft Forest Protocol Guidance to the California Climate Action Registry [California Energy Commission Docket No. 01-GGE-1]. We respectfully submit these comments and look forward to working with you in designing an effective system for encouraging the achievement of real climate benefits in the forest sector, accurately and comprehensively tracking those activities, and making that information available to the public.

Unfortunately the current draft of the Guidance does not meet these goals. In particular, the current guidance does not provide the proper conceptual or practical basis for characterization the baseline against which projects will be evaluated, and therefore cannot ensure the credibility of reported claims of net greenhouse gas reductions. The credibility of claims is further compromised by the very limited role of the Registry and State agency staff in evaluating reports and the lack of public access to information.

It is worth noting that very few of these issues are related to the forest sector specifically. Rather, these are carbon accounting and program design issues introduced by the choice of accepting project-based emissions reduction reporting. Project reporting inevitably involves a self-selected boundary (leading to “cherry picking” and other issues). Reporting emissions reductions rather than just emissions (or carbon stocks) introduces the very tricky issue of baselines, which are hypothetical constructs of emissions in the absence of the project. Credible project reporting requires great clarity, agency oversight, and transparency.

Additionality and Baselines

Emission reductions from projects should be evaluated relative to a reasonable ***projection of business-as-usual*** rather than against existing legal requirements. That is, a project should be evaluated relative to what would have occurred in the absence of the project. Emission reductions reports under the CA Registry may be used, among other purposes, to claim beneficial achievements for the climate and in the future to

receive offsets or credits against regulatory schemes. It defies common sense for the CA Registry to accept reports based on activities that could reasonably be anticipated to occur anyway.

SB 812 does not state that legal requirements alone are a sufficient basis for characterizing a project baseline and determining additionality. SB 812 should be interpreted as using legal requirements (in CA Forest Practice Rules and elsewhere) as a ***minimum threshold*** below which no project baseline could be constructed. Specifically, SB 812 states that "forestry activities that are reported as a participant's emissions results … shall be based on forest management practices within a defined project area that *exceed* applicable federal, state, and local land use laws and regulations…".[1] Moreover, SB 812 states that "procedures and protocols shall require, *at a minimum*, that those forestry activities meet…" this and other criteria.[2] SB 812 therefore allows that the procedures and protocols for forest projects for baselines and additionality could include factors in addition to legal requirements, and that these requirements could exceed mere compliance with existing law. Most other project evaluation programs use legal requirements as a minimum eligibility screen, not a baseline approach.

The Forest Project Protocol baseline characterization needs to include additional factors that are indications of projected management activities. Legal requirements would be sufficient only if the vast majority of California forestland was managed to the letter of the law (e.g., if harvesting levels consistently reached the maximum allowable legal level). However, the California Department of Forestry's *Forest and Range 2003 Assessment* does not indicate that this is the case and the Draft Protocol does not attempt to make this claim.[3]

The Draft Forest Project Protocol approach to conservation-based forest management and reforestation needs to be revised to incorporate additional factors. For forest management, the current draft states the following: "[The baseline characterization] should include the assumption that the baseline characterization would represent a scenario of harvest and regeneration to the extent permitted by these identified laws and regulations."[4] Unless this assumption can be proven valid for the vast majority of California forest land, this approach fails to capture a common sense approach to additionality and misinterprets SB 812, as argued above. The approach to reforestation is similarly flawed because it relies primarily on legal requirements without presenting any justification that this reasonably represents likely reforestation activities.

The approach to forest conservation – to use recent trends in loss of forest land to represent likely future rates – is more realistic. Although the Protocol does not state

[1] SB 812, Section 2(d)(1).
[2] SB 812, Section 2(d).
[3] *Forest and Range 2003 Assessment Summary*, at page 8-9. The discussion of timber harvest to yield ratios implies that some areas harvest in excess of yield increases and some harvest much less, and that these differences are not explainable solely by reference to existing legal requirements.
[4] Forest Project Protocol, at page 15.

the rationale, the use of legal requirements alone would obviously not satisfactorily represent future rates of forest loss in a baseline scenario. An extension of recent trends is a practical approach. However, the use of county-wide averages should be re-examined. The values in Annex A are very low and it appears that conservation projects would be unlikely to use them. Even the fastest default rate (Sierra softwoods) is below one percent loss year, meaning that a project has over a 100 year timeline to derive the full carbon benefit of conservation. As a result the "site specific conversion threat" approach will almost certainly dominate. This leads to two recommendations:

- *Default rates*: The registry should explore whether different geographic areas could be used to construct default. For example, trend analysis could be conducted to identify priority areas for conservation within each county (i.e., areas with high likelihood of forest conversion). If eligibility was limited to these priority areas then a higher rate of conversion could be used in the baseline.
- *Site specific threat*: Some of the bulleted items in paragraph 2 (page 17) seem too preliminary or vague. When is a purchase bid realistic? What level of plans for subdivision? Shouldn't the protocol require approval of requests for conversion or rezoning, not just submission of the request?

The Forest Project Protocol does not demonstrate that the FPR are a clear objective basis for baseline characterization (with the legal additionality approach). The FPR and other regulations listed in the Protocol Annex appear quite flexible or open to interpretation, at least in some cases. The Protocol therefore requires additional guidance for reporters and considerable technical and policy judgment on the part of the Registry and/or agency staff.

The additionality section is redundant. Additionality is defined in the Protocol as simply going beyond the baseline. Thus, the only substantive guidance needed is on baseline characterization. It is not clear what the additionality section would add to the baseline characterization section, and indeed the current additionality section only adds confusion.

The Additionality section makes a very strange statement that should be removed throughout: "Monitoring the project area to assess that the additional project activities are being implemented would confirm the project's additionality."[5] Monitoring the project area over time can confirm what activities have occurred, provide carbon stock data, and form the basis for the regular reporting to document actual project performance (rather than projected estimates), but it cannot confirm an additionality determination. Monitoring should be addressed in the relevant reporting and monitoring sections. Additionality must be confirmed during the initial baseline characterization and subsequent revisions.

The baseline characterization should be re-evaluated over time to reflect changes in factors affecting management activities. The Draft Protocol is inconsistent on this point. In most places, the Protocol implies that the baseline is characterized once at the initiation of the project and then remains static in terms of assumed baseline practices

[5] Forest Project Protocol, at page 18.

(e.g., page 18). However, at least for historic baselines, the Protocol states that the baseline should change over time to reflect FPR changes in 1993 and 1999.[6] Static baseline characterization should not be used because it allows projects to report reductions indefinitely even as legal and other conditions change over time. Taken to extreme, the Protocol permits reporting reduction in 2050 and beyond based on doing better than circumstances prevailing in 2004. As a practical matter, the Protocol should adopt two rules that are used in other project assessment programs: (1) regular baseline re-evaluation (e.g., every 5 to 7 years, or possibly more for forest projects); and (2) a maximum crediting period beyond which no further reductions can be reported (e.g., 40 years for forest projects).

A related issue is the suggestion that existing practices at the time of project initiation should be used to characterize the baseline. As explained above, the baseline should be based on a reasonable ***projection of management activities***. In some special circumstances, this projection may be a "static" extension of current practice, but this should not be assumed *a priori*.

The Draft Protocol states that the legal additionality approach is being considered for projects outside of California. This approach does not appear to work even in California, and will certainly not be one that can be used if the registry expands to projects from other locations, or as an approach for other systems to adopt.

Response to Other Questions on Additionality

Question 5. Baseline characterization should be based on a reasonable projection of business-as-usual activity, and not on legal additionality or a static representation of current management practices. This approach is necessary for environmental integrity of claimed emission reductions. Weaker baseline approaches will reduce the credibility of reported reductions and may reduce their economic value in emissions markets.
Question 8. Proprietary models pose significant problems regarding transparency and consistency and should not be used.
Question 10. Even given the flawed approach of legal additionality, the Draft Protocol does not discuss exactly how legal requirements would be translated into a greenhouse gas scenario. It would be truly remarkable if the laws and regulations did not contain considerable room for subjective interpretation, especially as they were not designed for the purpose of greenhouse gas accounting. This issue should be examined in more detail if the legal additionality concept is retained.
Question 11. Gaming and inadvertent interpretations can greatly degrade consistency and accuracy. There are three approaches to help prevent this from happening. First, public access to project information and public comment periods can deter gaming and provide additional input (this issue is examined in more detail below). Second, the Registry and/or CEC must have sufficient time, resources, and expertise to thoroughly review project applications and annual reports (this issue is examined in more detail below). Third, reports could be required to submit sensitivity analyses that would shed light on how key assumptions affect the projected and reported project effects.

[6] Forest Project Protocol, at page 15.

Leakage

The current guidance essentially ignores leakage. Reporters are required to answer three anecdotal questions on activity shifting. Questions on market leakage are optional. In neither case is the reporter required to quantify the leakage effect.

Ignoring leakage greatly reduces the credibility of the Protocol, given that leakage is one of the main concerns with project-based emission reduction assessments and with forestry projects in particular. Having decided to accept forest project emission reduction reports, the Registry has a responsibility to adequately address the commonly accepted assessment challenges.

For activity shifting, the questions in Annex A should be expanded to provide specific guidance on how to assess the extent of leakage. The net emissions effect of leakage must then be quantified. What is the point of the current approach of describing leakage but not quantifying the reduction in overall project effects?

The claim on page 21 that activity shifting within the entity will be captured is not correct in any meaningful sense. Emissions reductions are being claimed on a project-specific basis. Unless the project emission reductions are adjusted to account for leakage then the project reports are simply inaccurate. The fact that entity-wide reporting will report carbon stock levels from areas that may be experiencing activity shifting from a project does not change the fact that the project assessment ignores leakage.

Market leakage is a serious problem for some forest project types. The Registry cannot pass the buck to reporters to figure out an approach to this issue. This is both unfair and unrealistic, and even if reporters were to address the issue voluntarily it would inevitably be on an inconsistent basis. The Registry should conduct a review of the existing literature on leakage assessment and develop default tables for market leakage effects, by area and project type. (The Registry should put at least as much effort into leakage methodologies as it has for the wood product assessment.)

Permanence

A comprehensive approach to permanence requires two elements. First, project monitoring and reporting must occur on an ongoing basis in order to be able to detect any loss of carbon stocks. Second, in the event of a loss of carbon stocks then the reported reductions from the project must be correspondingly adjusted downward. When monitoring and reporting ceases then the permanence of the carbon stocks can no longer be assured, and the project should be removed from the registry. (Reports from projects no longer being monitored could be retained in a separate portion of the registry, but should be clearly differentiated from the reports of projects that still have valid monitoring and certification.) Any other approach will inevitably lead to the registry containing reports of emission reductions that are based on carbon that cannot be verified.

A permanent easement may be a valuable tool to achieve specific policy goals, e.g., favoring certain types of projects. However, an easement does not in itself guarantee that the carbon stocks associated with emission reduction claims are maintained over time. This can only be achieved by regular, ongoing monitoring of the carbon stocks associated with reported reductions.

Significant Events

Project baselines should not be adjusted to compensate for significant events that occur during project implementation. It is not the job of the registry to decide what outcomes are or are not the responsibility of the project. Rather, it should just monitor actual outcomes and compare them to the approved baseline. Significant events such as fire and pest infestations should be the responsibility of the project, and should be handled through insurance or other risk management approaches.

Measures taken by the project to address significant events do not require any special treatment by the Forest Protocol. If they are successful, then that will automatically show up in the ongoing monitoring of carbon stocks. The purpose of the registry is to record verified performance, not to record project activity itself.

If a project is located in an area with high risk of fire or pest infestation then this might possibly be addressed in the baseline (i.e., baseline projected carbon stocks could be reduced based on likely loss from fire or pests). However, this approach could not address the issue of major loss of carbon stocks from significant events during project implementation.

Certification vs. Registry Review and Evaluation

The Protocol envisions a project reporting process that places far too much responsibility on certifiers, and far too little on the registry and/or state agencies. The Registry and the State must take responsibility for the credibility of its own reporting system. The Protocol must include steps in the reporting process for review by the registry and/or state of the initial project application (especially on the baseline) and of annual reports. Furthermore, the registry and/or state must envision some process for developing and issuing clarifying guidance as interpretation of the rules occurs over time.

Certifiers can only certify to a clear standard. The Forest Project Protocol is not such a standard because there is significant subjective interpretation that will have to occur in applying the rules to specific projects. It is simply not a certifier's job to make these subjective decisions without rigorous oversight by the registry itself. There must be a central and meaningful role for the program staff to review project details. The occasional spot-check of certification procedures described on page 3 of the Certification Protocol is entirely insufficient.

To believe that project developers and certifiers, even with the best of intentions and highest professional credentials, can apply the Protocol rules in a credible and consistent manner without active participation by the registry is simply fantastical and ignores over ten years of experience with project-based programs. For example, a complete lack of review by the Department of Energy is one of the key factors undermining the federal 1605b registry. The California Registry should do better.

We recognize that this will require considerable resources to accomplish and that this may add to the application fees. However, the costs on a per project basis should only be high during early stages of implementation. Experience will quickly lead to clarifying guidance for all common project types, which will greatly reduce transaction costs. Failure to invest this time and effort upfront will be more costly in the long run, as it could undermine all the investment in the Forest Project Protocol program.

Public Access to Information

Sufficient information must be made available so that the public can independently assess the validity of reported emission reductions. To present aggregate information, to withhold data on confidentiality grounds, etc., severely degrades the usefulness of reported data. Consider the situation of an environmental organization asked to comment on registry reports by a journalist, or in the context of the design of a regulatory system. It is simply impossible to comment favorably if the information is not available to see how the Protocol rules have been applied in practice. In particular it is important to be able to see the exact characterization of the baseline scenario and the underlying justification, and this element in particular should not be withheld on confidentiality grounds.

The best approach is to provide for public comment ***before emission reductions are accepted into the registry***. Under this approach the certification reports would be made available for public comment at the same time they are reviewed by the registry staff. This would greatly enhance the credibility of the reported reductions, and also provides a free source of expert review. The Clean Development Mechanism of the Kyoto Protocol has taken this approach. If public comment is not available before the fact, then there will be the awkward situation of having public debate over the registry contents that could lead to the "de-certification" of emission reductions.

The current approach of the Protocol and Certification Protocol is woefully inadequate. For example, page 56 of the Protocol indicates that aggregate data only will be available. This implies that no information whatsoever on baseline characterization, leakage assessment, and other key subjective assessments will be available. Moreover, this occurs only after the fact. This approach provides absolutely no transparency to the registry.

We recognize that the Registry is a non-governmental organization and that the concept of a public comment period for project reports may be somewhat strange in this context. Nevertheless, for the reasons presented above, a clear, standardized, transparent

process for early public comment is perhaps the best way to ensure that the overall goals of the Registry are met.

Reduction Adjustment (Page 50).

The Reduction Adjustment greatly confuses the proper approach to project reporting by mixing up pre-implementation projections of project reductions and actual, monitored project reductions. The registry should keep these two completely separate. The registry should only accept emissions reductions that are based on the monitored and certified performance of the project. A projection of reductions has no basis in fact and should under no circumstances be recorded in the same part of the registry as monitored, certified reductions. The projected reductions estimate should only be included as part of the initial acceptance of the project into the registry.

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Thank you for considering these comments. We look forward to the opportunity to participate in the development of the Forest Protocol.

Sincerely,

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